

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	No. 2:17-cv-02717-TLP-tmp
v.)	
)	JURY DEMAND
FLASH MARKET, INC.,)	
)	
Defendant.)	
)	

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission (Commission or EEOC) and Defendant Flash Market, Inc., (Flash Market) jointly submit this Consent Decree (Decree) for the Court’s approval to resolve this Title VII lawsuit.

INTRODUCTION

The Commission, an agency of the United States of America, enforces federal laws prohibiting employment discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., (Title VII), represents one of the laws the Commission enforces. Among other things, Title VII prohibits employers from discriminating against employees on the basis of sex. Title VII also prohibits employers from retaliating against persons who protest discriminatory employment practices.

Flash Market, an Arkansas corporation, headquartered in West Memphis, Arkansas, owns and operates convenience-store gas stations in Alabama, Arkansas, Mississippi, and Tennessee under the Citgo, Phillips, Conoco and Shell brands.

The Commission filed this lawsuit on September 28, 2017, under Title VII against Flash Market. In its Complaint, the Commission alleges Flash Market violated Title VII by discriminating against a former employee, Sylvia Rhodes (Rhodes), because of her sex, female. Specifically, the Commission alleges Flash Market's Area Manager, Waletha Love, sexually harassed Rhodes by subjecting her to a hostile working environment based on sex while she was employed at Store #166, 2444 Poplar Avenue, Memphis, Shelby County, Tennessee. The Commission further alleges Flash Market violated Title VII by terminating Rhodes' employment in retaliation for her filing a charge of sex discrimination with the Commission. Flash Market denies the Commission's allegations.

After the Commission commenced litigation, the Commission and Flash Market initiated settlement discussions to resolve this civil action. This Decree represents the parties' resolution of the litigation. The Commission and Flash Market consent to the Court's entry of this Decree to avoid the additional expense involved in protracted litigation and other burdens on the parties and the Court arising from the continued litigation of this civil action.

The Commission and Flash Market stipulate the terms and conditions of this Decree serve to effectuate the purposes of Title VII. The terms of the Decree are fair, reasonable, adequate, and serve the public interest in eradicating sexual harassment discrimination.

FINDINGS

After examining the terms and conditions of this Decree, and based on the pleadings, record, and stipulations of the Commission and Flash Market, the Court finds the terms of this Decree are adequate, fair, reasonable, equitable, and just. The Decree furthers the objectives of Title VII and adequately protects the rights of the Commission, the Defendant, the allegedly aggrieved person, and the public interest.

It is hereby ORDERED, ADJUDGED AND DECREED:

SCOPE OF DECREE

1. This Decree resolves all issues and claims in the Complaint filed by the Commission in this Title VII action (“the Complaint”), which emanated from the Charge of Discrimination filed by Rhodes. This Decree in no way affects the Commission’s right to process any other pending or future charges that employees may file against Flash Market and to commence civil actions on any such charges.

EFFECTIVE DATE AND DURATION OF DECREE

2. This Decree shall become effective immediately upon entry by the Court and shall remain in effect for the duration of eighteen (18) months after the Effective Date.

JURISDICTION

3. This Court has jurisdiction over the Commission and Flash Market and the subject matter of the case. The Court will retain jurisdiction over this Decree for the purposes of enforcement. Neither the Commission nor Flash Market shall contest either the jurisdiction of this Court to enter or enforce this Decree or the rights of the Commission to monitor Flash Market’s compliance with the Decree and to bring an enforcement action in the event Flash Market fails to comply with the terms of the Decree.

NON-ADMISSION CLAUSE

4. This Decree shall not constitute an admission, adjudication, or finding on the merits of the case. Flash Market expressly denies violating Title VII.

INJUNCTIVE RELIEF

5. Flash Market is enjoined from committing sexual harassment or discriminating against

employees on the basis of sex in violation of Title VII at its Shelby County, Tennessee stores.

6. Flash Market is enjoined from retaliating against any employees employed in its Shelby County, Tennessee stores because they complained of sexual harassment.

INDIVIDUAL AFFIRMATIVE AND MONETARY RELIEF DAMAGES

7. Flash Market shall pay Rhodes \$100,000 as compensatory damages for alleged non-pecuniary harm. Flash Market shall issue Rhodes an IRS form 1099-MISC representing the total amount paid as compensatory damages.

METHOD OF PAYMENT

8. Flash Market shall make payment of all monetary relief in two separate installments. Flash Market shall pay the first installment no later than ten (10) calendar days after the Effective Date of this Decree. Flash Market shall pay the second installment no later than January 5, 2019. Flash Market shall pay the first installment by mailing a cashier check via United States Postal Service certified mail or Federal Express directly to Rhodes at 3815 Rhodes Avenue, Memphis, TN 38111 in the amount of \$72,500. Flash Market shall pay the second installment by mailing a cashier check via United States Postal Service certified mail or Federal Express directly to Rhodes at 3815 Rhodes Avenue, Memphis, TN 38111 in the amount of \$27,500. Flash Market shall contemporaneously transmit a copy of each check and any accompanying correspondence via email to the Commission at EEOC-MEDO-decree-monitoring@eeoc.gov.

9. Late payment of a check shall be subject to the accrual of interest pursuant to 28 U.S.C. § 1961.

10. As a condition of receiving payment, Rhodes will execute the form Release attached hereto as Appendix A.

POSITIVE EMPLOYMENT REFERENCES

11. In the event Flash Market receives an inquiry from any prospective employer concerning Rhodes, Flash Market shall:

- a. provide a positive employment reference;
- b. verify the dates of Rhodes' employment;
- c. verify her beginning and ending wage;
- d. provide a statement identifying Rhodes' job title and job duties and stating that she remains eligible for rehire; and
- e. make no reference to any charge of discrimination or this case.

Flash Market's response to any prospective employer concerning Rhodes shall remain permanent and is not limited to the duration of this Decree.

PURGING OF PERSONNEL FILE

12. Flash Market will remove from Rhodes' personnel file all documents related to this case, including the charges of discrimination, the notice of charge, and all correspondence and investigative information directed to and from the Commission relating to her charge. Within ten (10) business days from the Effective Date of this Decree, Flash Market shall confirm in writing to the Commission at EEOC-MEDO-decree-monitoring@eeoc.gov that Flash Market met the requirements of this provision.

TRAINING AND REPORTING ANTI-DISCRIMINATION TRAINING

13. During the duration of this Decree, Flash Market shall provide two mandatory training sessions of at least two (2) hours each for all personnel, including management personnel, who perform duties at its Shelby County, Tennessee stores, concerning the anti-discrimination laws enforced by the Commission, and specifically Title VII.

APPEARANCE FROM CHIEF EXECUTIVE OFFICER OR HIGH-LEVEL COMPANY OFFICIAL AT THE TRAINING

14. Prior to conducting any training, Flash Market's Chief Executive Officer or other high level company official will open the training session in person or via video recording. The Chief Executive Officer or other high-level company official will expressly state to all attendees at the training:

- a. Flash Market seeks to create a workplace free of discrimination, including sex discrimination;
- b. Flash Market does not condone any type of sexual harassment in the workplace;
- c. Flash Market will not tolerate any type of sexual harassment in the workplace.
- d. Employers, managers, supervisors, and employees must respect each other in the workplace;
- e. The respect for each other includes a requirement that employers, managers, supervisors and employees must not engage in sexual harassment of any kind;
- f. Managers, supervisors, and employees are all responsible for reporting sexual harassment of any kind that they may see or hear in the workplace;
- g. All managers and supervisors are responsible for monitoring and stopping harassment by those they supervise;
- h. Failure to report harassment will result in appropriate disciplinary action; and
- i. Sexual harassment will result in appropriate disciplinary action, up to and including termination.

TRAINING

15. For the training identified in paragraph 13 above, a licensed attorney or other SHRM-certified professional shall conduct the training:

- a. Defendant may video-record the training sessions for prompt presentation to current employees who are unable to attend in-person and to new employees and managers upon hire.
- b. Each employee must acknowledge receipt of the training in writing, indicating their printed name, signature, and the date of attendance;
- c. The trainer shall conduct the training in English and Spanish, if necessary;
- d. The first training session shall occur no later than sixty (60) calendar days from the Effective Date of this Decree;
- e. Flash Market shall notify the Commission of the date, time, and place of the training sessions no later than thirty (30) calendar days prior to the session;
- f. Flash Market shall allow a Commission representative to attend and observe each training session, and to offer to answer any questions raised by the attendees;
- g. Flash Market shall make and keep, and provide to the Commission upon request, records of each training session, including the date and time of training, the name and credentials of the person conducting the training, an outline of the subjects presented, copies of any materials distributed, and the names and signatures of each employee in attendance;
- h. Each training session shall inform participants of:
 - (a) Flash Market's equal employment opportunity policy;
 - (b) the existence of the EEOC and its role as a federal agency in enforcing anti-discrimination laws;
 - (c) the right to complain of unlawful discrimination and the internal procedure for doing so;

- (d) the right to protection from retaliation in the event a person complains of unlawful discrimination; and
- (e) the right to file a charge with the EEOC.
 - i. The training session shall also outline activities that constitute unlawful discrimination, including sexual harassment.

EMPLOYEE EXIT INTERVIEWS

16. For the duration of this Decree, Flash Market shall conduct exit interviews of each employee who resigns or is otherwise separated from employment for any reason from Flash Market's stores in Shelby County, Tennessee. Flash Market shall specifically ask the resigning or separating employee if they believe, during their employment with Respondent, they have been subjected to sex discrimination or retaliation for engaging in a protected activity under Title VII. Flash Market shall make and keep records of all such interviews and shall make such records available to the Commission pursuant to the Monitoring and Enforcement provisions set forth in this Decree.

RECORDKEEPING AND REPORTING PROVISIONS

17. Flash Market shall maintain records of any complaints of sexual harassment or retaliation involving any of its employees or managers at Flash Market's Shelby County, Tennessee stores. These records must include:

- a. the names, addresses, telephone numbers of the applicant or employee making the complaint;
- b. the date of the report or complaint;
- c. a detailed description of the allegations made;
- d. the name and position of the alleged bad actor(s); and

- e. what actions, if any, Flash Market took to resolve the complaint.

NOTICE POSTERS

18. Flash Market shall post in its Shelby County, Tennessee, stores, for the duration of this Decree, the Notice to Employees attached as Appendix B. The Notice shall be posted in a conspicuous location in any non-public area of Flash Market's facility frequented by employees, such as a break room or clock-in / clock-out area.

MONITORING AND ENFORCEMENT

19. The Commission may monitor Flash Market's compliance with this Decree, with fourteen (14) calendar day notice, by:

- a. examining documents or other records required to be made or kept by this Decree;
- b. interviewing employees and management at Flash Market's Shelby County, Tennessee stores concerning the requirements of and compliance with this Decree;
- c. inspecting Flash Market's Shelby County, Tennessee stores; and
- d. requiring Flash Market to submit written reports concerning its compliance.

20. If the Commission, at its sole discretion, finds Flash Market has failed to comply with the Decree, the Commission shall provide Flash Market notice of the failure and allow it a period of fifteen (15) business days from receipt of the notice to comply. If, after the 15-business-day period has expired, Flash Market has failed to comply, the Commission may then petition this Court for relief. Such relief may include further permanent or temporary injunctions, monetary relief, costs, and/or penalties for contempt of court.

SUCCESSOR LIABILITY

21. During the term of this Decree, prior to any sale of assets that includes a Shelby County, Tennessee, store or merger with another company, Flash Market shall provide prior written

notice of the existence and contents of this Decree to any potential purchaser of Flash Market's business, or a purchaser of all or a portion of Flash Market's non-inventory assets (if such portion includes a Shelby County, Tennessee, store), and to any other potential successor.

COSTS, EXPENSES AND NOTICES

22. The Commission and Flash Market shall bear their own costs, attorney fees, and expenses arising from this litigation.

23. All notices, certifications, reports, or other communications that this Decree requires the Commission and Flash Market to exchange shall be in writing and transmitted as follows:

a. To the Commission, via electronic mail to:

EEOC-MEDO-decree-monitoring@eeoc.gov.

b. To the Employer, via electronic mail to:

Chip Chiles
cchiles@qgtlaw.com

If Flash Market's contact information changes, Flash Market shall notify the Commission of such change within fifteen (15) business days.

SO ORDERED, this 28th day of December, 2018.

s/Thomas L. Parker

THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE